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THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Brenda Pomerance Confirmation: 7218
Filed: April 5, 2000 Art Unit: 3621
Serial No.: 09/543,049 Examiner: John W. Hayes
Title: AUTOMATED ALTERNATIVE DISPUTE RESOLUTION

**APPEAL BRIEF
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Notice of Appeal in this case was filed on June 30, 2004. This Appeal Brief is due on August 30, 2004, which time has been extended by three (3) months to November 30, 2004.

(1) REAL PARTY IN INTEREST

The party in interest is Brenda Pomerance.

(2) RELATED APPEALS AND INTERFERENCES

On October 18, 2004, a Notice of Appeal was filed in application serial no. 09/793,687, which claims priority from the instant application.

(3) STATUS OF CLAIMS

Claims 46-63 and 82-89 are pending in this application.

Claims 82-84 have been allowed.

Un-allowed claims 46-63 and 85-89 are being appealed. Claims 46, 55 and 85 are independent, and have respective dependent claims 47-54, 56-63 and 86-89.

(4) STATUS OF AMENDMENTS

No amendments have been filed in this application. All amendments filed in the parent applications hereto have been entered.

(5) SUMMARY OF INVENTION

The present invention relates to an automated assisted negotiation system that provides a structured process for a complainer and a complaine to resolve a problem (page 4, line 4). If resolution cannot be achieved with the present system, the system can forward a well-formed record of the automated proceedings to a human dispute resolver for their services (page 6, line 22 – page 7, line 2).

Advantages of an automated assisted negotiation system are that

- the system is inexpensive compared with engaging a human dispute resolution professional;
- the system enables a complainer to use its dispute resolution procedure even if the complainer is unaware of dispute resolution methodology; and
- the system serves the complainer by providing portions of the complaine's predefined information to the complainer at the times when the information is relevant to the complainer

More specifically, the assisted negotiation system can be implemented as a web site interacting with a visiting complainer (page 5, lines 22-23). The system provides a complaint form to the complainer enabling the complainer to provide pertinent information about the complainer and the problem (page 7, line 11).

After the complainer enters information about the type of problem (page 7, line 15 - page 8, line 16), the system determines which portion of information previously supplied by the

complainee is relevant, and supplies the relevant information to the complainer (page 9, line 22 – page 10, line 2; page 10, lines 18-21). This is substantially more convenient than the typical frequently asked questions (FAQ) approach, which requires that the complainer (a) guess that there is relevant information on the website, and (b) try to find the relevant information.

The assisted negotiation system encourages the complainer to vent their emotions, which is an important feature of dispute resolution, and prepares a summary of the emotional information for inclusion in the complaint summary (page 6, lines 7-8). Humans are built to react emotionally before they react intellectually; accordingly, it is well-known among dispute resolution professionals that giving parties an opportunity to express their feelings promotes reaching agreement, i.e., resolving the dispute. It is also well-known among dispute resolution professionals that a person who has an opportunity to be heard is more likely to be satisfied with a dispute resolution process, even if the outcome is adverse to the person. Thus, even if the system does not make decisions based on the emotional information provided by the complainer, the mere collection of the information and “reflecting back” of the information in summary form has a positive effect on the complainer, i.e., makes the complainer “feel heard”.

The assisted negotiation system also suggests at least one remedy to the complainer, based on the nature of the complainer’s problem (page 10, lines 5-6). The at least one remedy is selected from a set of predefined remedies. Each complainee may provide its own set of acceptable remedies for various types of problems (page 10, lines 19-21). The system includes the remedy(s) chosen by the complainer in the prepared complaint summary (page 10, lines 8-9).

After the complainer approves the prepared complaint, including the actual name of the complainer (page 7, lines 15-16), the system forwards the prepared complaint to the complainee (page 10, lines 11-12).

(5.1) CLAIM 46 -- PROVIDING SELECTED DATA

Claim 46 relates to a method of processing a complaint by a computer. Initial information is received from a complainer including information identifying the complainer (*page 7, line 13 – page 8, line 21: the complaint form solicits information from the complainer; Fig. 3A, step 205*).

Selected data is chosen from data previously received from a complaine based on the initial information from the complainer, and the selected data is provided to the complainer (*page 10, lines 18-21: during a setup phase, a merchant provides information to be sent to customers when a particular type of dispute occurs; page 9, line 22 – page 10, line 2: previously provided portions of a merchant's policy are given to a customer, based on the information in the complaint form*).

Additional information is received from the complainer (*page 9, lines 6-7: system 60 checks whether there is sufficient information to state a problem and at least one desired remedy; it is implicit that if there is insufficient information, the complainer must provide additional information to satisfy the need for sufficient information. page 10, lines 3-4: system 60 suggests a resolution; it is implicit that the complainer provides additional information to either accept or reject the resolution suggested by system 60*).

The complaint is prepared based on the initial information and the additional information (*page 9, lines 8-10: system 60 prepares a complaint summary*), and presented to the complainer for approval to generate an approved complaint (*page 10, lines 11-15: the customer approves the complaint summary prepared by system 60*).

The approved complaint, including the information identifying the complainer, is forwarded to the complaineo (*page 10, lines 11-12: system 60 forwards the complaint summary to the merchant; Fig. 3A, step 210*).

Claims 47-52 depend directly from claim 45 and respectively call for the prepared complaint to include emotional state information relating to the complainer (*page 8, lines 8-9, 10, 13: three places for free-form text entry; page 4, lines 8-10: role of a third party in dispute resolution is to filter the emotional reactions of disputants; page 6, line 8: system 60 summarizes the complaint to filter emotional venting – implicitly, the venting that occurred in the free-form text entry*), the prepared complaint to include indications of at least two remedies desired by the complainer (*page 10, lines 3-4: system 60 suggests a resolution in addition to the remedies indicated by the customer*), the prepared complaint to include statements in first person language based on information received from the complainer that was not in first person language (*page 9, lines 8-10: system 60 prepares a complaint summary in first person active language*), the data previously received from the complaineo relates to the complaineo's complaint handling policy (*page 10, lines 18-21: during a setup phase, a merchant provides information to be sent to customers when a particular type of dispute occurs*), and docketing the approved complaint for predetermined actions at predetermined times (*page 10, lines 8-10: system 60 enters the case into its docketing system for generating reminders and status e-mail*).

Claim 53 depends from claim 52 and requires automatically preparing a case summary based on the complaint and the response (*page 16, lines 1-2: system 60 prepares a summary of the dispute; Fig. 3C, step 395*).

Claim 54 depends from claim 46 and calls for providing data relating to other complaints to the complainer prior to preparing the complaint (*page 9, lines 22-23: system 60 provides relevant cases to the customer*).

(5.2) CLAIM 55 -- EMOTIONAL STATE INFORMATION

Claim 55 relates to a method of processing a complaint by a computer. Information is received from a complainer including information describing a problem (*page 8, lines 5-9: menu of problems and free-form text entry describing problem*), information relating to an emotional state of the complainer (*page 8, lines 8-9, 10, 13: three places for free-form text entry*), and information identifying the complainer (*page 7, lines 15-16*).

The complaint is automatically prepared including emotional state information based on the information received from the complainer (*page 4, lines 8-10: role of a third party in dispute resolution is to filter the emotional reactions of disputants; page 6, line 8: system 60 summarizes the complaint to filter emotional venting – implicitly, the venting that occurred in the free-form text entry; page 9, lines 8-10: system 60 prepares a complaint summary*), and presented to the complainer for approval to generate an approved complaint (*page 10, lines 11-15: the customer approves the complaint summary prepared by system 60*).

The approved complaint is automatically forwarded to the complaineo (*page 10, lines 11-12: system 60 forwards the complaint summary to the merchant; Fig. 3A, step 210*).

Claims 56, 58-61 and 63 each depend from claim 55 and respectively call for providing data previously received from the complaineo to the complainer prior to preparing the complaint (*page 9, line 22 – page 10, line 2: previously provided portions of a merchant's policy are given to a customer, based on the information in the complaint form*), the prepared complaint to include indications of at least two remedies desired by the complainer (*page 10, lines 3-4: system*

60 suggests a resolution in addition to the remedies indicated by the customer), the prepared complaint to include statements in first person language based on information received from the complainer that was not in first person language (*page 9, lines 8-10: system 60 prepares a complaint summary in first person active language*), docketing the approved complaint for predetermined actions at predetermined times (*page 10, lines 8-10: system 60 enters the case into its docketing system for generating reminders and status e-mail*), providing a response from the complaine to the complainer (*page 12, line 21; Fig. 3A, step 235*), and providing data relating to other complaints to the complainer prior to preparing the complaint (*page 9, lines 22-23: system 60 provides relevant cases to the customer*).

Claim 57 depends from claim 56, and calls for the data previously received from the complaine to relate to the complaine's complaint handling policy (*page 10, lines 19-20: during setup, the merchant provides information about its policies to be sent to customers in the event of disputes*).

Claim 62 depends from claim 61, and calls for automatically preparing a case summary based on the complaint and the response (*page 16, lines 1-2: system 60 prepares a summary of the dispute; Fig. 3C, step 395*).

(5.3) CLAIM 85 -- REMEDY SUGGESTION

Claim 85 relates to a method of processing a complaint by a computer. Information is received from a complainer including information relating to a problem experienced by the complainer (*page 8, lines 5-9: menu of problems and free-form text entry describing problem*) and information identifying the complainer (*page 7, lines 15-16*).

At least one remedy is automatically suggested to the complainer by the computer (*page 10, lines 3-4: system 60 suggests a dispute resolution in addition to or instead of the remedies*

indicated by the customer). A response to the at least one suggested remedy is received (it is implicit that the complainer provides additional information to either accept or reject the resolution suggested by system 60).

The complaint is prepared based on the information and the response received from the complainer, and the prepared complaint is presented to the complainer for approval to generate an approved complaint (*page 10, lines 11-15: the customer approves the complaint summary prepared by system 60*).

The approved complaint is forwarded to the complaine (page 10, lines 11-12: system 60 forwards the complaint summary to the merchant; Fig. 3A, step 210).

Claims 86-89 each depend from claim 85 and respectively call for the prepared complaint to include emotional state information relating to the complainer (*page 8, lines 8-9, 10, 13: three places for free-form text entry; page 4, lines 8-10: role of a third party in dispute resolution is to filter the emotional reactions of disputants; page 6, line 8: system 60 summarizes the complaint to filter emotional venting – implicitly, the venting that occurred in the free-form text entry*), docketing the approved complaint for predetermined actions at predetermined times (*page 10, lines 8-10: system 60 enters the case into its docketing system for generating reminders and status e-mail*), providing a response from the complaine to the complainer (*page 12, line 21; Fig. 3A, step 235*), and providing data relating to other complaints to the complainer prior to preparing the complaint (*page 9, lines 22-23: system 60 provides relevant cases to the customer*).

(6) ISSUES

The Examiner made nine separate rejections, and applicant believes this results in nine corresponding Appeal Issues:

1. Are claims 46, 48, 50, 52, 54 unpatentable over U.S. Patent No. 5,895,450 (Sloo) in view of the Online Resolution Press Release dated March 23, 2000 (“Online Resolution”)? (see paragraph 11 of the March 31, 2004 Office Action)
2. Are claims 47, 55-58, 61-63 unpatentable over Sloo in view of Online Resolution and the article by Joel Eisen, “Are We Ready for Mediation in Cyberspace” (“Eisen”)? (see paragraph 12 of the March 31, 2004 Office Action)
3. Is claim 49 unpatentable over Sloo in view of Online Resolution, Eisen and the Eileen Brownwell article “Say It Right” (“Brownwell”)? (see paragraph 13 of the March 31, 2004 Office Action)
4. Is claim 51 unpatentable over Sloo in view of Online Resolution, Eisen and U.S. Patent No. 6,154,753 (McFarland)? (see paragraph 14 of the March 31, 2004 Office Action)
5. Is claim 59 unpatentable over Sloo in view of Online Resolution, Eisen and Brownwell? (see paragraph 15 of the March 31, 2004 Office Action)
6. Is claim 60 unpatentable over Sloo in view of Online Resolution, Eisen and McFarland? (see paragraph 16 of the March 31, 2004 Office Action)
7. Are claims 85, 88, 89 unpatentable over Sloo in view of U.S. Patent No. 5,495,412 (Thiessen)? (see paragraph 17 of the March 31, 2004 Office Action)
8. Is claim 85 unpatentable over Sloo, Thiessen and Eisen? (see paragraph 18 of the March 31, 2004 Office Action)
9. Is claim 87 unpatentable over Sloo, Thiessen and McFarland? (see paragraph 19 of the March 31, 2004 Office Action)

(7) GROUPING OF CLAIMS

The claims of the group corresponding to Issue 2 above do not stand or fall together, as this group encompasses claims depending from two independent claims. Arguments are presented below as to why claims subject to the same rejection are separately patentable. Issue 2 above is considered as Issues 2A and 2B:

2A. Is claim 47 unpatentable over Sloo, Online Resolution and Eisen? (see paragraph 12 of the March 31, 2004 Office Action)

2B. Are claims 55-58, 61-63 unpatentable over Sloo, Online Resolution and Eisen? (see paragraph 12 of the March 31, 2004 Office Action)

(8) ARGUMENT

(8.1) SUMMARY OF ARGUMENT

The Examiner has fallen “victim to the insidious effect of hindsight syndrome wherein that which only the inventor taught is used against its teacher.” *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 200 USPQ 303, 312-13 (Fed. Cir. 1983).

A dispute resolution professional of ordinary skill in the art at the time the invention was made, such as an arbitrator or mediator, believed that mediation was an art using techniques different than the techniques of arbitration, and due to this difference, would not combine techniques from arbitration with techniques from mediation (*Declaration of Kallas, para. 8-11; Declaration of Femenia, para. 9-12*). However, the Examiner improperly combined references directed to arbitration with those directed to mediation to arrive at the instant invention, redesigned what the references taught to arrive at the instant invention, and acted against the teachings of the references themselves to cherry-pick them to arrive at the present invention.

Claim 55 relates to having a computer manage emotions during dispute resolution. While applicant firmly believes that managing emotions is a very complex process, applicant realized that in the narrow case of emotional venting, well understood to be part of the emotional management component of dispute resolution (*page 4, lines 8-10*), a computer can facilitate this almost as well as a human – probably well enough to be “good enough” – and at far less cost and stress than when a human serves as a listener. Nothing in the prior art showed or suggested a computer system for emotional management. Just because it may be simple to program a computer to support emotional venting does not mean it is obvious to do so, particularly when managing emotional venting is viewed as an art fundamental to human mediators. The Examiner has improperly resorted to hindsight reconstruction to supply deficiencies in his facts. *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967).

Claim 46 relates to a computer system processing a complaint from a non-anonymous complainer. The purpose of Sloo’s anonymous system is to encourage people to post complaints about businesses in a publicly searchable database so that other people can research the conduct of the businesses (*column 5, lines 3-10*); lack of anonymity would discourage postings and defeat the purpose of Sloo’s system. Yet, the Examiner maintains it would be obvious to redesign Sloo to be non-anonymous, thereby pretty much crippling the system. Sloo maintains a performance record for each user to discourage abuse of his system (*column 4, lines 55-60*); clearly he considered the uses of non-anonymity and yet did not suggest that his system could also be non-anonymous. The issue of anonymity is technically simple, but functionally profound, and the Examiner improperly ignores the significance of anonymity.

Claim 85 relates to a computer system that, in the course of processing a complaint, suggests a remedy to the complainer. Here, the computer system is performing one of the

functions traditionally performed by a human dispute resolver. A distraught complainer is often too focused on their own situation to realize that studying other similar situations might help them with their own situation. Expecting a complainer to take the initiative to find such situations assumes the complainer has some proficiency in dispute resolution, which is an unfounded assumption for most people. Sloo certainly did not appreciate this point; although he enables a complainer to project the outcome of the dispute, the complainer must do this separate from filing a complaint (*column 10, lines 48-52 and column 11, lines 21-36*). The present invention, by suggesting remedies during the complaint filing process, is suitable for even complainers knowing nothing about dispute resolution techniques. Additionally, the complainer has the power to accept or reject the suggested remedy, which begins to redress the frustrating lack of power felt by many wronged parties. Sloo's system does not support these dynamics and there is nothing in the prior art that would suggest redesigning Sloo's system according to claim 85. The Examiner is using the teaching of claim 85 to reject claim 85, which is improper.

This Appeal is necessary to get a fresh evaluation of the patentability of the instant claims from the proper perspective. All claims are believed to recite patentable subject matter.

(8.2) CLAIMS 55-63 ARE PATENTABLE

Claim 55 relates to a method of processing a complaint by a computer. Information is received from a complainer including information describing a problem, information relating to an emotional state of the complainer, and information identifying the complainer. The complaint is automatically prepared including emotional state information based on the information received from the complainer, and presented to the complainer for approval to generate an approved complaint. The approved complaint is automatically forwarded to the complaine.

Claims 56, 58-61 and 63 each depend from claim 55 and respectively call for providing data previously received from the complaine to the complainer prior to preparing the complaint, the prepared complaint to include indications of at least two remedies desired by the complainer, the prepared complaint to include statements in first person language based on information received from the complainer that was not in first person language, docketing the approved complaint for predetermined actions at predetermined times, providing a response from the complaine to the complainer, and providing data relating to other complaints to the complainer prior to preparing the complaint.

Claim 57 depends from claim 56, and calls for the data previously received from the complaine to relate to the complaine's complaint handling policy.

Claim 62 depends from claim 61, and calls for automatically preparing a case summary based on the complaint and the response.

(8.2.1) ISSUE 2B: Are claims 55-58, 61-63 unpatentable over Sloo, Online Resolution and Eisen?

Sloo

Sloo discloses a system for handling complaints that informs other consumers about the complaints (column 1, line 23) and rewards good conduct while punishing bad conduct in complaint resolution (column 1, lines 44-50).

Sloo's system prompts a complainer to enter a detailed complaint including identifying information – the user's phone number and e-mail address – keywords summarizing the complaint, and a requested remedy (column 4, lines 49-52; column 4, line 63 – column 5, line 2). The identifying information is used to track the complainer's conduct (column 5, lines 3-6). The system sends the complaint to the complainer by e-mail, receives a confirmation including any

corrections and, as verification, compares the confirmation to the detailed complaint (column 5, lines 20-29).

The system creates a unique e-mail address for the complainer, to be used by the complainer and complainee so they can privately negotiate a settlement by communicating directly with each other (column 5, lines 11-19; column 7, lines 33-35 and 42-65).

Then, Sloo's system sends to the complainee the detailed complaint, the suggested remedy and the complainer's unique e-mail address (column 5, lines 38-45). Sloo's system does not disclose the name of the complainer to the complainee; the anonymity encourages complaint filing (column 6, lines 43-46).

If direct negotiation between the complainer and the complainee does not yield a resolution, the complaint can be referred to a jury (column 8, lines 5-45) or to a computer program that decides the complaint (column 9, line 57 – column 10, line 14).

Sloo's system posts a notice of the complaint in a public database including the keywords or abbreviated description of the complaint entered by the user (column 5, lines 3-6). The public database is searchable by the public (column 5, lines 57-65)

Online Resolution

Online Resolution discloses a way for mediators to use the Internet for mediating disputes between people who will never meet (page 2, paragraph 1).

A complainer goes to a web site, fills out a form describing their complaint and submits the complaint by e-mail to the Mediation Information and Resource Center (MIRC). MIRC contacts the complainee, and if the complainee agrees to mediation, MIRC selects a human mediator. The complainer, complainee and human mediator then communicate by e-mail to

solve the problem (page 1, last paragraph). Fees range from \$50 to \$100 per hour of mediator time (page 1, penultimate paragraph).

If in-person negotiation is desired, MIRC will provide names of mediators in the geographic area of the complainer and complaineo (page 2, fourth paragraph).

Online Resolution quotes John Helie and Colin Rule. With regard to online mediation, Helie states (page 2, second paragraph),

Yes, you don't have the nonverbal cues, but the face-to-face in most cases is overrated and not necessary.

Rule states that just as body language matters in negotiation, politeness matters in e-mail mediations (page 2, sixth paragraph), and notes (page 2, seventh paragraph),

Emotions are a big part of the mediation process.

Eisen

Eisen discloses online mediation via e-mail that passes through a human mediator (page 2, last paragraph; page 3, first and second paragraphs) with documents posted on a website (page 2, second paragraph). Eisen argues that such online mediation is unfeasible until technology progresses to replicate face-to-face interactions (page 1, abstract; page 2, third paragraph; page 15, second paragraph).

Eisen points out that the written nature of online mediation will create communication breakdowns (page 2, first paragraph).

Eisen notes that the anonymity of the Internet is a main attraction, but that this anonymity creates an authentication problem (page 7, second paragraph).

Eisen is consistently skeptical about the efficacy of online mediation due to the constraints of an online process:

One's ability to express emotion online is different; cyberspace currently "comes without all five senses attached." "Oral expressions of feelings in a face-to-face setting have a richer and more meaningful context than written expressions of feelings in an E-mail exchange. (page 2, last paragraph)

The substitution of E-mail for dialogue, for example, makes it difficult to give any weight to emotion in mediation. (page 5, second paragraph)

The opportunity to tell one's version of the case directly to the opposing party and to express accompanying emotions can be cathartic for mediation participants. ... I am extremely doubtful that catharsis could happen in any setting other than a face-to-face conversation. (page 5, second-third paragraph)

The emotional impact of articulating one's position is attenuated if one is separated from the listener by an electronic distance. If an element of the catharsis is not simply to tell one's story, but also to have an effect on the listener, then online mediation seems hampered as well by the limitations on one's ability to emote online. (page 5, third paragraph)

Sending E-mail is a solitary endeavor, bereft of the opportunity to engage the parties in a therapeutic conversation and to listen to and understand their concerns, emotions and feelings. **To the extent that this is an important value of the mediation process, online mediation could not accomplish it.** (page 5, fourth paragraph, emphasis added)

The claims about the benefits of electronic distance amount to blatant double-talk. ... using E-mail isolates the participants from one another. (page 6, first paragraph)

Moreover, in making the assumption that introspection may be desirable, proponents are inappropriately considering "thoughtful" reflections to be more valuable than instinctive articulations of emotion or anger. Removing the ability to articulate in the moment might prevent participants from making spontaneous proposals about issues in dispute, and would disadvantage those participants who are not introspective. (page 6, last paragraph)

[I]t would be an unwarranted arrogation of decision-making authority if an online mediator deliberately suppressed expressions of anger or emotion in order to promote "constructive" responses. (sentence bridging pages 6-7)

Like a listserv moderator, the mediator would believe it to be her responsibility to filter out messages that would tend to derail the proceeding, such as messages expressing anger, emotion, or bias. (page 14, first paragraph)

Eisen notes that online mediation could be very costly due to consuming computer resources, higher costs of researching and articulating one's position in textual form, and more mediator time needed to review submissions in their entirety (page 10, first paragraph).

The combination of Sloo, Online Resolution and Eisen

As the Examiner acknowledged, Sloo does not show or suggest collecting emotional information during complaint preparation.

Each of Online Resolution and Eisen is concerned with mediation involving a human mediator. It is improper to combine Sloo, relating to an arbitration system, with either of Online Resolution or Eisen, since these references relate to mediation (*Declaration of Kallas, para. 10 and 11; Declaration of Femenia, para. 11 and 12*).

Even if Sloo, Online Resolution and Eisen were combined, the result would be to modify Sloo's direct negotiation to be an online mediation with a human mediator addressing the emotional states of the disputants (*Declaration of Kallas, para. 12 and 13; Declaration of Femenia, para. 13 and 14*).

The Eisen reference does not teach collecting emotional state information in a system lacking a mediator. The Eisen reference teaches that emotions are an important part of the mediation process, that emotions cannot be properly conveyed in e-mail, and so online mediation will not live up to its promotions. To be usable for what it teaches away from, Eisen would have to present the teaching for the same use as in the claimed invention, which Eisen does not do. Accordingly, the Examiner's combination of Eisen and Sloo was improper.

Similarly, Online Resolution does not teach a computer that collects emotional state information; instead, Online Resolution is concerned with a human mediator that uses a computer as a communication means. Online Resolution's business was to sell the services of human mediators at a fairly hefty hourly fee; there is no suggestion in Online Resolution of eliminating human mediators. Accordingly, the Examiner's combination of Online Resolution and Sloo was improper.

In short, there is no proper combination of the cited references, and even if they are combined, since each of them lacks the feature of "receiving, at a computer, information relating to an emotional state of the complainer", the combination of the cited references does not render claim 55 obvious.

Claims 56-58 and 61-63, in depending from claim 55, incorporate all of its features and are not made obvious by the cited references for the reasons discussed above.

Thus, claims 55-58, 61-63 are patentable over Sloo, Online Resolution and Eisen.

(8.2.2) ISSUE 5: Is claim 59 unpatentable over Sloo in view of Online Resolution, Eisen and Brownwell?

Brownwell

Brownell was cited for its disclosure of the use of first person language. Brownell is an article on effective interpersonal communication.

The combination of Sloo, Online Resolution, Eisen and Brownwell

Brownwell does not show or suggest the feature of "receiving, at a computer, information relating to an emotional state of the complainer", so the combination of the cited references does not render claim 59 obvious.

For the reasons discussed above, claim 59 is patentable over Sloo, Online Resolution, Eisen and Brownwell.

(8.2.3) ISSUE 6: Is claim 60 unpatentable over Sloo in view of Online Resolution, Eisen and McFarland?

McFarland

McFarland was cited as teaching a method for entering customer complaints into its system, wherein the complaint form is saved with an indication of when follow up with the customer is needed. McFarland relates to a quality standards document control system.

The combination of Sloo, Online Resolution, Eisen and McFarland

McFarland does not show or suggest the feature of “receiving, at a computer, information relating to an emotional state of the complainer”, so the combination of the cited references does not render claim 60 obvious.

For the reasons discussed above, claim 60 is patentable over any proper combination of Sloo, Online Resolution, Eisen and McFarland.

(8.3) CLAIMS 46-54 ARE PATENTABLE

Claim 46 relates to a method of processing a complaint by a computer. Initial information is received from a complainer including information identifying the complainer. Selected data is chosen from data previously received from a complaineer based on the initial information from the complainer, and the selected data is provided to the complainer. Additional information is received from the complainer. The complaint is prepared based on the initial information and the additional information, and presented to the complainer for approval to generate an approved complaint. The approved complaint, including the information identifying the complainer, is forwarded to the complaineer.

Claims 47-52 depend directly from claim 45 and respectively call for the prepared complaint to include emotional state information relating to the complainer, the prepared complaint to include indications of at least two remedies desired by the complainer, the prepared complaint to include statements in first person language based on information received from the complainer that was not in first person language, the data previously received from the complaineer relates to the complaineer's complaint handling policy, and docketing the approved complaint for predetermined actions at predetermined times.

Claim 53 depends from claim 52 and requires automatically preparing a case summary based on the complaint and the response.

Claim 54 depends from claim 46 and calls for providing data relating to other complaints to the complainer prior to preparing the complaint.

(8.3.1) ISSUE 1: Are claims 46, 48, 50, 52, 54 unpatentable over Sloo and Online Resolution?

The combination of Sloo and Online Resolution

Sloo states, at column 6, lines 42-46,

Additionally, the apparatus 10 does not disclose the actual names of the complainants to the subjects [complainees] so that the complainants may remain anonymous. This further encourages users to file complaints with the apparatus.

In *Winner Int'l Royalty Corp. v. Wang*, 202 F.3d 1340, 53 USPQ2d 1580 (Fed. Cir. 2000), *cert. den.* 2000 US LEXIS 4144 (2000), the Court stated,

[I]f Johnson did in fact teach away from Moore, then that finding alone can defeat Wang's obviousness claim. ... A "reference will teach away if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the results sought by the applicant." *In re Gurley*, 27 F.3d 551, 553, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994).

Claim 46 requires “automatically forwarding, from the computer, the approved complaint, including the information identifying the complainer, to the complainee”. Sloo explicitly and plainly teaches *withholding* information identifying the complainer from the complainee; thus Sloo teaches away from the invention of claim 46. Under *Winner Int’l Royalty Corp.*, the fact that Sloo teaches away from the invention of claim 46 defeats the Examiner’s obviousness assertion.

Online Resolution is directed to a system that supports a human mediator, whereas Sloo does not have a human mediator, so it is improper to combine Sloo and Online Resolution (*Declaration of Kallas, para. 10; Declaration of Femenia, para. 11*). Even if these references had to be combined, since Sloo’s anonymity is an important feature of its system, one of ordinary skill in the art of dispute resolution would not modify Sloo’s system so that the complainer is named (non-anonymous) (*Declaration of Kallas, para. 14; Declaration of Femenia, para. 15*).

Thus, claim 46 is not made obvious by any proper combination of Sloo and Online Resolution. Claims 48, 50, 52 and 54, in depending from claim 46, are similarly not made obvious by the cited references.

For the reasons discussed above, claims 46, 48, 50, 52, 54 are patentable over any proper combination of Sloo and Online Resolution.

(8.3.2) ISSUE 2A: Is claim 47 unpatentable over Sloo, Online Resolution and Eisen?

Eisen does not justifying redesigning Sloo to be non-anonymous, as incorporated in claim 47 by virtue of its dependence from claim 46. Accordingly, claim 47 is patentable over any proper combination of Sloo, Online Resolution and Eisen.

(8.3.3) ISSUE 3: Is claim 49 unpatentable over Sloo in view of Online Resolution, Eisen and Brownwell?

Brownwell does not justifying redesigning Sloo to be non-anonymous, as incorporated in claim 49 by virtue of its dependence from claim 46. Accordingly, claim 49 is patentable over any proper combination of Sloo, Online Resolution, Eisen and Brownwell.

(8.3.4) ISSUE 4: Is claim 51 unpatentable over Sloo in view of Online Resolution, Eisen and McFarland?

McFarland does not justifying redesigning Sloo to be non-anonymous, as incorporated in claim 51 by virtue of its dependence from claim 46. Accordingly, claim 51 is patentable over any proper combination of Sloo, Online Resolution, Eisen and McFarland.

(8.4) CLAIMS 85-89 ARE PATENTABLE

Claim 85 relates to a method of processing a complaint by a computer. Information is received from a complainer including information relating to a problem experienced by the complainer and information identifying the complainer. At least one remedy is automatically suggested to the complainer by the computer. A response to the at least one suggested remedy is received. The complaint is prepared based on the information and the response received from the complainer, and the prepared complaint is presented to the complainer for approval to generate an approved complaint. The approved complaint is forwarded to the complainee.

Claims 86-89 each depend from claim 85 and respectively call for the prepared complaint to include emotional state information relating to the complainer, docketing the approved complaint for predetermined actions at predetermined times, providing a response from the complainee to the complainer, and providing data relating to other complaints to the complainer prior to preparing the complaint.

(8.4.1) ISSUE 7: Are claims 85, 88, 89 unpatentable over Sloo in view of Thiessen?

Thiessen

Thiessen discloses a system that assists multi-party negotiations (column 3, lines 11-15). A set of issues is defined and agreed upon by the parties (column 6, lines 2-15). Then each party inputs its preferences – a range of decision values -- on the issues to confidential system files (column 6, lines 16-30). Based on the preferences, Thiessen's system uses a linear programming algorithm to propose alternative solutions to the parties (column 8, lines 46-49). The system is useful because it has confidential information (column 12, line 55 – column 12, line 2).

The combination of Sloo and Thiessen

Sloo does not disclose suggesting a remedy to a complainer during complaint preparation, as specifically recited in claim 85. To one of ordinary skill in the art of dispute resolution, changing Sloo so that the computer suggests a remedy to the complainer during complaint filing would change Sloo's fundamental dynamics and create a system substantively different than Sloo's system (*Declaration of Kallas, para. 15; Declaration of Femenia, para. 16*).

While Thiessen discloses proposing alternative solutions, its alternative solutions are based on preferences input by parties. Thiessen's system functions as an elaborate calculator. Thiessen assumes that the parties are negotiating directly with each other, such as to agree on what the issues are. Thiessen is not concerned with automating the negotiation process.

There is no reason that one of ordinary skill in the art would combine Sloo and Thiessen, other than improperly using claim 85 as a guide for hindsight reconstruction. That is, there is no proper combination of Sloo and Thiessen that renders claim 85 obvious.

Claims 88 and 89, in depending from claim 85, are similarly not obvious over any proper combination of Sloo and Thiessen.

For the reasons discussed above, claims 85, 88, 89 are patentable over any proper combination of Sloo and Thiessen.

(8.4.2) ISSUE 8: Is claim 86 unpatentable over Sloo, Thiessen and Eisen?

Eisen does not justify fundamentally altering Sloo so that Sloo's system suggests a remedy to the complainer during complaint preparation, as incorporated in claim 86 by virtue of its dependence from claim 85. There is no proper combination of the cited references that makes claim 86 obvious.

For the reasons discussed above, claim 85 is patentable over any proper combination of Sloo, Thiessen and Eisen.

(8.4.3) ISSUE 9: Is claim 87 unpatentable over Sloo, Thiessen and McFarland?

McFarland does not justify fundamentally altering Sloo so that Sloo's system suggests a remedy to the complainer during complaint preparation, as incorporated in claim 87 by virtue of its dependence from claim 85. There is no proper combination of the cited references that makes claim 87 obvious.

For the reasons discussed above, claim 87 is patentable over any proper combination of Sloo, Thiessen and McFarland.

(9) APPENDIX

Claims 1-45 are cancelled.

46 (previously amended). A method of processing a complaint, comprising:
automatically receiving, at a computer, initial information from a complainer including
information identifying the complainer,
automatically selecting, at the computer, selected data from data previously received
from a complaineo based on the initial information from the complainer,
automatically providing, from the computer, the selected data to the complainer,
automatically receiving, at the computer, additional information from the complainer
after providing the selected data to the complainer,
automatically preparing, at the computer, the complaint based on the initial information
and the additional information received from the complainer,
automatically presenting, from the computer, the prepared complaint to the complainer
for approval to generate an approved complaint, and
automatically forwarding, from the computer, the approved complaint, including the
information identifying the complainer, to the complaineo.

47 (previously added). The method of claim 46, wherein the prepared complaint
includes emotional state information relating to the complainer.

48 (previously added). The method of claim 46, wherein the prepared complaint
includes indications of at least two remedies desired by the complainer.

49 (previously added). The method of claim 46, wherein the prepared complaint includes statements in first person language based on information received from the complainer that was not in first person language.

50 (previously added). The method of claim 46, wherein the data previously received from the complaineo relates to the complaineo's complaint handling policy.

51 (previously added). The method of claim 46, further comprising docketing the approved complaint for predetermined actions at predetermined times.

52 (previously added). The method of claim 46, further comprising providing a response from the complaineo to the complainer.

53 (previously added). The method of claim 52, further comprising automatically preparing a case summary based on the complaint and the response.

54 (previously added). The method of claim 46, further comprising providing data relating to other complaints to the complainer prior to preparing the complaint.

55 (previously amended). A method of processing a complaint, comprising:
automatically receiving, at a computer, information from a complainer including information describing a problem, information relating to an emotional state of the complainer, and information identifying the complainer,

automatically, at the computer, preparing the complaint including emotional state information based on the information received from the complainer,

automatically, at the computer, presenting the prepared complaint to the complainer for approval to generate an approved complaint, and

automatically forwarding, from the computer, the approved complaint to the complaineo.

56 (previously added). The method of claim 55, further comprising providing data previously received from the complaine to the complainer prior to preparing the complaint.

57 (previously added). The method of claim 56, wherein the data previously received from the complaine relates to the complaine's complaint handling policy.

58 (previously added). The method of claim 55, wherein the prepared complaint includes indications of at least two remedies desired by the complainer.

59 (previously added). The method of claim 55, wherein the prepared complaint includes statements in first person language based on information received from the complainer that was not in first person language.

60 (previously added). The method of claim 55, further comprising docketing the approved complaint for predetermined actions at predetermined times.

61 (previously added). The method of claim 55, further comprising providing a response from the complaine to the complainer.

62 (previously added). The method of claim 61, further comprising automatically preparing a case summary based on the complaint and the response.

63 (previously added). The method of claim 55, further comprising providing data relating to other complaints to the complainer prior to preparing the complaint.

Claims 64-81 are cancelled.

82 (previously amended). A method of processing a complaint, comprising:
automatically forwarding, from a computer, a complaint approved by the complainer to a first complaine,

automatically detecting, at the computer, that the first complainee caused the complaint to be forwarded to a second complainee,

automatically detecting, at the computer, that the second complainee indicated that the complaint should be forwarded to the first complainee, and

automatically initiating, at the computer, a procedure to determine which of the first complainee and second complainee is responsible for substantively responding to the complaint.

83 (previously added). The method of claim 82, wherein the procedure includes sending a notice to the first and second complainees requesting that they determine which of them is responsible for substantively responding to the complaint.

84 (previously added). The method of claim 82, wherein the procedure includes automatically selecting one of the first and second complainees to substantively respond to the complaint.

85 (previously amended). A method of processing a complaint, comprising:
automatically receiving, at a computer, information from a complainer including information relating to a problem experienced by the complainer and information identifying the complainer,

automatically suggesting, at the computer, at least one remedy to the complainer,
automatically receiving, at the computer, a response to the at least one suggested remedy,
automatically preparing, at the computer, the complaint based on the information and the response received from the complainer,

automatically presenting, from the computer, the prepared complaint to the complainer for approval to generate an approved complaint, and

automatically forwarding, from the computer, the approved complaint to the complainee.

86 (previously added). The method of claim 85, wherein the prepared complaint includes emotional state information relating to the complainer.

87 (previously added). The method of claim 85, further comprising docketing the approved complaint for predetermined actions at predetermined times.

88 (previously added). The method of claim 85, further comprising providing a response from the complainee to the complainer.

89 (previously added). The method of claim 85, further comprising providing data relating to other complaints to the complainer prior to preparing the complaint.

For the reasons discussed above, applicant requests that the Board of Appeals reverse the Examiner's rejections of claims 46-63 and 85-89.

Respectfully submitted,

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